

STATE OF MICHIGAN
COURT OF APPEALS

PAUL R. ROSE,

Plaintiff-Appellee,

v

AMY J. SCOTT,

Defendant-Appellant.

UNPUBLISHED

February 12, 1999

No. 213516

Jackson Circuit Court

LC No. 96-077008 DC

Before: Smolenski, P.J., and Saad and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from a circuit court order denying her petition for modification of a prior court order granting plaintiff physical custody of the parties' minor child. The circuit court initially granted defendant physical custody of the child, but subsequently adopted a friend of the court (FOC) recommendation to award plaintiff physical custody. Defendant then filed the petition to modify custody. We reverse and remand.

Defendant contends that the circuit court erred when it relied on the earlier FOC recommendation favoring plaintiff and found no change of circumstances sufficient to warrant a revisitation of its prior order granting plaintiff physical custody. When reviewing a child custody matter, this Court must affirm the decision of the trial court unless its factual findings are against the great weight of the evidence, its discretionary rulings demonstrate a palpable abuse of discretion, or it has made a clear legal error with regard to a major issue. *York v Morofsky*, 225 Mich App 333, 335; 571 NW2d 524 (1997), quoting MCL 722.28; MSA 25.312(8).

The circuit court erred in simply denying defendant's petition for modification without first conducting an evidentiary hearing. When the circuit court on March 2, 1998 adopted the FOC recommendation and changed the minor's physical custody from defendant to plaintiff, the court failed to discern whether an established custodial environment existed and failed to conduct any sort of evidentiary hearing. The court similarly failed to conduct any investigation before rendering its decision denying defendant's petition for modification in July of 1998. The court noted that "[i]f this matter was going to be fully litigated, it should have been litigated in March 1998."

The first step in deciding a child custody dispute is to determine if there exists an established custodial environment. MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Stringer v Vincent*, 161 Mich App 429, 434; 411 NW2d 474 (1987). Where a trial court fails to make a finding regarding the existence of a custodial environment, this Court will remand for such a finding unless there is sufficient evidence in the record for this Court to make its own finding by de novo review. *Thames v Thames*, 191 Mich App 299, 304; 477 NW2d 496 (1991). In deciding a custody matter, the trial court must also determine the minor's best interest by considering and stating its findings on each of the statutory best interest factors. MCL 722.23; MSA 25.312(3); *Daniels v Daniels*, 165 Mich App 726, 730; 418 NW2d 924 (1988). Failure to make these specific findings constitutes error requiring reversal. *Daniels, supra*. Defendant contends that she terminated a relationship with an abusive boyfriend after the FOC's investigation and that plaintiff did not honestly describe to the FOC investigator his current drug use habits. These allegations, if true, would constitute proper cause and changed circumstances affecting an analysis of the minor's best interest. MCL 722.27(1)(c); MSA 25.312(7)(1)(c). Given that the trial court did not make a determination of an established custodial environment before it terminated defendant's physical custody of the minor, that additional evidence exists regarding plaintiff's drug use and defendant's changed circumstances, and that the circuit court has never held an evidentiary hearing in these proceedings, the record is not sufficient for this Court to make a finding on de novo review that a custodial environment was established. Because it was clear legal error for the court in the present case to adopt the FOC recommendation to award the minor's physical custody to plaintiff and deny defendant's petition for modification without ever determining whether the minor had an established custodial environment or making specific findings on the record regarding each of the twelve factors that are to be taken into account in determining the minor's best interest, we remand this case to the circuit court so that it may make such findings and proceed accordingly.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Henry William Saad

/s/ Hilda R. Gage